

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ELLIOTT & FRANTZ, INC.	:	CIVIL ACTION
	:	
v.	:	
	:	
INGERSOLL-RAND COMPANY	:	NO. 03-4746

MEMORANDUM AND ORDER

Fullam, Sr. J.

November 3, 2005

Plaintiff was a distributor of Ingersoll-Rand products. Ingersoll-Rand cancelled the distributorship arrangement, and plaintiff brought this suit for breach of contract. At an earlier stage, I ruled that Ingersoll-Rand had a right to terminate the contract, and therefore granted summary judgment dismissing plaintiff's complaint. That ruling was certified for interlocutory appeal, and is now before the Third Circuit Court of Appeals.

In addition to denying that it had violated the contract by terminating it, Ingersoll-Rand filed a counterclaim, asserting that, before the contract was ended, it had delivered certain equipment to plaintiff, and had not been paid. Ingersoll-Rand has filed a motion for summary judgment in its favor on the counterclaim, and plaintiff has responded by a motion for summary judgment in its favor on the counterclaim. The parties have briefed the issues at great length, but I am satisfied that neither party is entitled to summary judgment on the counterclaim. It is undisputed that plaintiff did not pay

Ingersoll-Rand for the equipment which was delivered shortly before termination, and therefore owes Ingersoll-Rand at least \$137,000 for that equipment (or more, if late fees, etc. are added). But it is also clear that, under the terms of the contract, plaintiff had the right to return its unused inventory of parts and equipment to Ingersoll-Rand, and Ingersoll-Rand had an obligation to pay plaintiff for such items. Plaintiff contends, with considerable force, that when the accounts are properly balanced, it will turn out that Ingersoll-Rand owes plaintiff money, in excess of the amount due from plaintiff for the unpaid for merchandise. Ingersoll-Rand does not actually address the merits of these contentions, but argues that plaintiff should be precluded from producing evidence on the subject because, allegedly, plaintiff has not timely complied with discovery requests. The record does not persuade me, however, that the criticism of plaintiff's discovery efforts is justified.

The cross-motions for summary judgment will be denied. The trial of the counterclaim will not be scheduled until the Court of Appeals has reached a decision on the pending appeal. In the interim, the parties are free to indulge in further discovery, in the unlikely event that it is necessary. The parties may also wish to consider the advisability of resorting to mediation for the resolution of any remaining disputes.

An Order follows.

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ORDER

AND NOW, this 3rd day of November 2005, IT IS ORDERED:

1. Defendant's motion for summary judgment on its counterclaim is DENIED.
2. Plaintiff's cross-motion for summary judgment on defendant's counterclaim is DENIED.
3. Trial of this action will not be scheduled until after the Court of Appeals has announced its decision in the pending appeal concerning the complaint.
4. In the interim, the parties are free to pursue discovery if actually necessary.
5. The parties are invited to consider the desirability of submitting their dispute to mediation.

BY THE COURT:

/s/ John P. Fullam
John P. Fullam, Sr. J.